



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

November 12, 2014  
PR 14-30  
ADV PR 14-04

Mr. Patrick Crowley  
Government Relations Director  
National Education Association of Rhode Island ("NEARI")  
99 Bald Hill Road  
Cranston, Rhode Island 02920  
pcrowley@nea.org

**Re: NEARI v. Newport Public Library**  
**In Re: Newport Public Library**

Dear Mr. Crowley:

The investigation into your Access to Public Records Act ("APRA") complaint filed against the Newport Public Library ("Library") is complete. Your complaint, as well as the Library's response, is set forth below. In brief, the Library seeks an APRA advisory opinion from this Department concerning whether it is a "public body" subject to the APRA, and you have filed a complaint with this Department contending that the Library violated the APRA when it denied your various requests for public records. Since both matters present the threshold question concerning whether the Library is a "public body," and since both matters present essentially the facts, we address both issues in this finding/advisory opinion.

At the outset, we note that in examining whether a violation of the APRA has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the APRA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Library violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

By letter dated January 9, 2014, the Library, through its legal counsel, Timothy C. Cavazza, Esquire, seeks an APRA advisory opinion concerning the applicability of the APRA to the Library. Mr. Cavazza represents the following, in pertinent part:

“The Library is a domestic non-profit corporation. It was incorporated in 1869, and it has adopted its own by-laws.

The Library is administered and managed by an independent and unpaid Board of Trustees (the ‘Board’) consisting of no less than nine (9) and no more than fifteen (15) elected members, each of whom is entitled to vote on Board matters. Currently, there are fifteen (15) voting Trustees on the Board. Such members of the Board are nominated and elected by the Board itself at its annual meeting, and they serve three (3) year terms. Members cannot serve more than two (2) consecutive terms without a break in service of at least one (1) year. If a vacancy occurs, the remaining members of the Board may vote to fill the unexpired term of the vacant seat.

In addition to its elected/voting members, the Board is authorized to invite one (1) member from each of the following groups to serve on the Board in an Ex Officio capacity: (1) the Newport City Council; (2) and the Friends of the Library. The Ex Officio members of the Board have no voting rights.

The Board has the sole and exclusive authority to remove any trustee from the Board. \* \* \*

The Board has the sole and exclusive authority to appoint a Library Director who serves, under the direction of the Board, as the chief administrative agent of the Board. The Library Director is responsible for the active executive management of the Library’s operations subject to the control of the Board.

Neither the City of Newport, nor any other public body, has control over the Library Director or the Board in their administration and management of the Library.

The Library, through its Board and the Library Director, has the sole and exclusive authority to adopt and maintain its annual budget and finances. Neither the City of Newport nor any other public body has authority to alter or amend the Library’s budget. The Library has no obligation to obtain approval regarding its budget from the City of Newport or any other public body.

According to the Board’s by-laws: ‘All checks, drafts, notes, bonds and orders for the payment of money, shall, unless otherwise directed by the Board of Trustees, be signed by two officers and/or the Library Director and one officer.’

\* \* \*

According to the Board’s by-laws: ‘Subject always to the specific direction of the Board of Trustees, all deeds made by the library and all other written contracts

and agreements to which the library shall be a party, shall be executed in its name by the President or the Vice-President and attested by the Secretary, and/or the Treasurer, when necessary or required.'

According to the Board's by-laws: 'No loans shall be contracted on behalf of the corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the board of trustees. Such authority may be general or confined to specific instances.'

The Library has received a sizable donation of public funds from the City of Newport in recent years. The City of Newport's donation to the Library has varied in size throughout the Library's history. For a period of over eighty (80) years, the City of Newport did not make a donation to the Library. In other years, the City's donation to the Library has been nominal. The Library also receives donations from other organizations and individuals.

Despite the fact that the City of Newport has made a donation to the Library in recent years, the City has no control over how the Library expends that donation once pledged and contributed.

The Library \* \* \* received a letter from the City of Newport's Director of Finance, a certified public accountant, in which she indicated that the Library would be omitted from the City's Comprehensive Annual Financial Report because it was not considered a component unit of the City under applicable standards of the Government Accounting Standards Board. \* \* \* From an accounting standpoint, the Library is governed by the standards issued by the Financial Accounting Standards Board, which are applicable to non-governmental entities.

The Library is an exempt organization under Section 501(c)(3) of the Internal Revenue Code.

The Library does comply with the requirements of the Rhode Island Open Meetings Act because the Library funded at least twenty-five percent (25%) of its operational budget with public funds last year. However, unlike Section 42-46-2(3) of [the] Open Meetings Act, the APRA's definition of 'public body' does not include 'any library that funded at least twenty-five (25%) of its operational budget in the prior year with public funds. \* \* \*

The Library, through its Board and its Director, is the employer to its employees. The City of Newport has no authority or control over any individual employed by the Library.

The Library's employees are not enrolled in, nor are they eligible to be enrolled in, the Rhode Island Municipal Employees Retirement System. The Library

provides full-time employees with a non-governmental, defined contribution pension plan that is governed by the Employee Retirement Income Security Act ('ERISA'). \* \* \* The Library is also required to have a fidelity bond related to its pension, which is a requirement that governmental employers typically do not have.

The Library does not act 'on behalf of and/or in place of' the City of Newport municipal government. Although the Library provides and maintains free library services for all residents of Newport, Rhode Island, it does not exist for the purpose of enhancing City of Newport services.”<sup>1</sup>

For purposes of the APRA, a “public body” means “any executive, legislative, judicial, regulatory, or administrative body of the state, or any political subdivision thereof; including, but not limited to, any department, division, agency, commission, board, office bureau, authority, any school, fire, or water district, or other agency of Rhode Island state or local government which exercises governmental functions, any authority as defined in section 42-35-1(b), or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency.” R.I. Gen. Laws § 38-2-2(1) (emphasis added).

While this request for an advisory opinion was pending, you filed an APRA complaint against the Library. By correspondence dated January 17, 2014, you allege the Library violated the APRA when it denied your access to records responsive to your APRA requests dated December 5, 6, 9, 10 and 12, 2013. You were seeking records such as copies of emails, Library Board of Trustees meeting minutes, job descriptions for Library employees, the names and addresses of Library Board of Trustees members and the date of their respective appointments. The Library's Director denied your request by correspondence dated December 20, 2013, stating that the Library was, inter alia, not subject to the APRA. Based upon the specific facts presented in this case, we agree.

In brief, we find insufficient evidence that the Library is a “political subdivision” of the City or acts “on behalf of and/or in place of any public agency.” Id. Some of the factors that are relevant to our analysis include the fact that the Library has the sole and exclusive authority to adopt and maintain its annual budget and finances. Neither the City of Newport nor any other public body has the authority to alter or amend the Library's budget and the Library has no obligation to obtain approval regarding its budget from the City. Although the City of Newport has made contributions to the Library, both nominal and sizable, the City of Newport has no control over how the Library expends the donations once pledged and contributed. For a period of over eighty (80) years, the City of Newport did not make any contributions to the Library. The Library is not part of the City's Comprehensive Annual Financial report because it is not considered a component unit of the City under applicable standards of the Government Accounting Standards Board. Rather, the Library is governed by the standards issued by the Financial Accounting Standards Board, which are applicable to non-governmental entities. The Library provides full-time employees with a non-governmental, defined contribution pension

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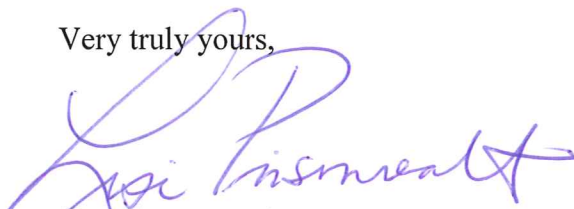
<sup>1</sup> The facts and arguments presented by the Library in response to your complaint are similar.

plan. Finally, the evidence presented demonstrates that “[n]either the City of Newport, nor any other public body, has control over the Library Director or the Board in their administration and management of the Library.” None of these averments have been contested.

Based upon the present facts, we cannot conclude that the Newport Public Library is a public body as that term is defined in the APRA. The Library is not a public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency, including the City of Newport. R.I. Gen. Laws § 38-2-2(1). Since the APRA is not implicated, the Library did not violate the APRA when it denied your request for records.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,



Lisa Pinsonneault  
Special Assistant Attorney General  
Extension 2297

LP/pl

Cc: Timothy C. Cavazza, Esquire  
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